

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

December 8, 2006

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.:970D-157

Oahu

Approval in Principle of an Exchange between the State of Hawaii and Tiana Partners and Hawaiian Humane Society for State-Owned Springing Executory Interest in Land at Niu, Honolulu, Oahu, Tax Map Keys: (1) 3-7-04:01, 02 & 20 and Privately-Owned Land at Niu, Honolulu, Oahu, Tax Map Key: (1) 3-7-04:02; and

Rescind Prior Board Action of October 28, 1994 Under Agenda Item F-13, Amendment to Prior Board Action of February 12, 1988 (Agenda Item F-24) Relating to an Agreement to Partition Land at Niu Valley, Honolulu, Oahu; Accept Quitclaim to a Portion of Property; Issue Quitclaims to the Remainder of Property; and Set Aside to the Division of Forestry and Wildlife, TMK 3-7-04: 01, 02 & 20.

APPLICANTS:

Department of Land and Natural Resources, Division of Forestry and Wildlife;

Tiana Partners, a Hawaii domestic partnership; and

Hawaiian Humane Society, a Hawaii nonprofit corporation.

PRIVATE LANDOWNERS:

Tiana Partners, a Hawaii domestic partnership whose business and mailing address is 440 Puamamane Street, Suite A, Honolulu, Hawaii 96821, which owns an unencumbered 47.8916032% undivided interest in TMKs (1) 3-7-04:01, 02 and 20; and

Hawaiian Humane Society, a Hawaii nonprofit corporation whose business and mailing address is 2700 Waialae Avenue, Honolulu, Hawaii 96826, which owns a 52.0183968% undivided interest in TMKs (1) 3-7-04:01, 02 and 20, encumbered by the State of Hawaii's springing executory interest.

LEGAL REFERENCE:

Section 171-50, Hawaii Revised Statutes, as amended.

INTERESTS TO BE EXCHANGED:

**State's Interest to be Conveyed:**

INTEREST: Springing executory interest encumbering the undivided fractional interest vested in Hawaiian Humane Society.

LOCATION: Portions of lands of Niu, Honolulu, Oahu, identified by Tax Map Keys: (1) 3-7-04:01 & 20, as shown on the attached map, Exhibit A.

AREA: 417 acres, more or less.

ZONING:

	State Land Use	City & County Zoning
Parcel 01	Conservation/ Urban	P-1 Restricted R-7.5 Residential
Parcel 20	Urban/ Conservation	R-7.5 Residential P-1 Restricted

TRUST STATUS: Whereas the State's springing executory interest was conveyed to the State after August 1959, the State's current interest is non-ceded.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES \_\_\_\_\_ NO XX

CURRENT USE: Whereas the State's interest in these lands is limited to a springing executory interest, there is no applicable use.

State's interest to be conveyed shall be subject to all exceptions, exclusions, reservations and easements of record.

**Privately-Held Interest to be Conveyed:** Whereas Hawaiian Humane Society and Tiana Properties own a combined 100% undivided interest in lands below, they will convey their respective interests to the State.

INTEREST: Fee simple interest in portion of lands of Niu, Honolulu, Oahu, identified by Tax Map Key: (1) 3-7-04:02, together with access and trail easements over Tax Map Keys: (1) 3-7-04:01 & 20

LOCATION: Portion of lands of Niu, Honolulu, Oahu, identified by Tax Map Key: (1) 3-7-04:02, as shown on the attached map labeled Exhibit A.

AREA: 263 acres, more or less.

ZONING: State Land Use District: Conservation  
City & County of Honolulu: P-1 Restricted

CURRENT USE: Vacant and unencumbered.

PUBLIC PURPOSE:

Addition to the Honolulu Watershed Forest Reserve.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

This action before the Board is a transfer of ownership and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

Although portions of the subject lands are within the Conservation District, no Conservation District Use Application ("CDUA") has been submitted. Any required permits for future uses of Conservation lands shall be the responsibility of the appropriate applicant.

FAIR MARKET VALUE AND CONSIDERATION IF ANY:

As required by Subsection 171-50(b), HRS:

"The public land exchange shall be of substantially equal value to that of the private land. In any exchange, the fair market value of the private land and the public land shall be separately determined by a disinterested qualified appraiser or appraisers and the cost shall be borne equally between the owner and the board. No payment by the State shall be required should the private land exceed the value of the public land, but any difference in value of the public land over the private land shall be paid to the State at the time of the exchange; provided no exchange shall be made should public land exceed 120 per cent of the value of the private land."

APPLICANT REQUIREMENTS:

Tiana Partners and HHS shall be required to:

- 1) Pay for the appraisal costs to determine the value of the properties and property interests to be exchanged;
- 2) Pay for the costs of public notice pursuant to section 171-16;
- 3) Provide survey maps and descriptions for the privately-owned property according to State DAGS standards and at no cost to the State;
- 4) Obtain a title report for the privately-owned property at no cost to the State and subject to review and approval by the Department;

- 5) Pay for and conduct a Phase I environmental site assessment for Parcel 2 and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conduct a Phase II environmental sampling and analysis plan and perform any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to the State and to the satisfaction of the Department.

REMARKS:

The Department of Land and Natural Resources, Division of Forestry and Wildlife ("DOFAW") requests the Board approve in principle, an exchange whereby the State would convey its springing executory interest encumbering otherwise privately-owned lands in return for the undivided fee simple interest in a ±263 acre portion of the same site. The land in which the State holds an interest is identified as TMKs (1) 3-7-04:01 ("Parcel 1"), 02 ("Parcel 2") and 20 ("Parcel 20"), as shown on Exhibit A. In exchange for its interest, the State would receive a ±263-acre parcel in fee, likewise identified on Exhibit A as Parcel 2.

Tiana Partners ("Tiana"), a Hawaii domestic partnership, and Hawaiian Humane Society ("HHS"), a Hawaii nonprofit corporation, are tenants in common of Parcels 1, 2 and 20, each holding an undivided fee simple interest of .479816032 and .520183968, respectively.

However, the fee simple interest conveyed to HHS is subject to the land being "used for the benefit of the public for the operation of an educational preserve for flora and fauna, to be made accessible as an educational experience for the public under the control and administration of said Hawaiian Humane Society and its successors and assigns, and, if not so used, then to State of Hawaii and its successors and assigns, for and as a public park."

Consequently, the State of Hawaii ("State") holds a springing executory interest in said land ("State interest"). Since the HHS's undivided fractional interest was conveyed in 1976 and 1982, the State interest is non-ceded.

Because of the State's interest, it was reported that HHS encountered difficulties developing the property to its full potential. Therefore, HHS and Tiana entered into discussions for a mutually agreeable resolution that contemplated the subdivision of the entire site into various parcels. Thereafter, in this former scenario, HHS and the State would hold a 100% undivided interest in the bulk of the property, encumbered by the State interest, while the remaining lands would be conveyed to HHS and Tiana, unencumbered by the State interest.

Pursuant to this former scenario, at its meeting of February 12, 1988, under agenda item F-24, the Board of Land and Natural Resources ("BLNR") agreed to enter in to a multi-party partition agreement with HHS, Tiana and Laura L. Thompson, whereby all parties would agree to: (1) a quitclaim of interest in the small portion of the site, free and clear of the deed restriction, for roadway purposes; and (2) all parties would agree to negotiate in good faith to consummate the proposed partition of the remaining land. At the time, the partition and exchange of interest was to be done pursuant to §171-50, Hawaii Revised Statutes ("HRS").

Subsequently, however, former staff opined that a judicial partition would be a more efficient and direct way to accomplish the desired result. Consequently, at its meeting on October 28, 1994, under agenda item F-13, the BLNR amended its action of February 12, 1988, by approving of (1) a judicial partition, subject to the review and approval of the Attorney General; (2) accepting the quitclaim of 263 acres of land identified as TMK (1) 3-7-04:02 together with easements for hiking and emergency access purposes; (3) the quitclaiming of any residual interest the State may have in lands identified as TMKs (1) 9-7-04:01 and 20 to Tiana and HHS; and (4) recommending to the Governor the issuance of an executive order setting aside TMK (1) 3-7-04:02 to the Department of Land and Natural Resources, Division of Forestry and Wildlife (DOOFAW).

However, due to a dispute between Tiana Partners and HHS, this project stalled in 1997. Whereas disputed terms had no impact on proposed State land or easements, the State was not involved in the disagreement.

Recently, Tiana and HHS have resolved their long-standing differences. Both parties entered into a Memorandum of Understanding ("MOU"), dated September 11, 2006, attached as Exhibit B. Pursuant to the MOU, the BLNR is once again being asked to consider the proposed partitioning and conveyance of its property interests.

Notwithstanding the BLNR's action of October 28, 1994, the Department of the Attorney General ("DAG") has recommended that the most appropriate process to accomplish the desired partitioning of interests and conveyance is in fact pursuant to §171-50, HRS. Consequently, BLNR is being asked to rescind its action of October 28, 1994, agenda item F-13.

Pursuant to §171-50, HRS, subject to BLNR, Department of the Attorney General and Legislative disapproval, as well as subject to approval by the Probate Court, the State proposes to quitclaim its springing executory interest in Parcels 1 and 20 in exchange for the 100% undivided fee simple interest in Parcel 2, together with access and trail easements over Parcels 1 and 20.

BLNR's favorable consideration of this request in principle will

allow staff to pursue appropriate due diligence to further evaluate the proposed land exchange. All findings of our evaluation will be subsequently presented to the BLNR when final approval of the proposed land exchange is requested.

Subject to the successful completion of the proposed exchange, DOFAW will assume management responsibility of Parcel 2, which will be added to its adjacent Honolulu Watershed Forest Reserve.

Staff has solicited comments from Department of Hawaiian Home Lands, Office of Hawaiian Affairs and DLNR divisions including State Parks, DOFAW's Na Ala Hele, Historic Preservation and Office of Conservation and Coastal Lands. No comments or objections were received.

RECOMMENDATION: That the Board:

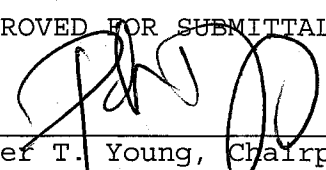
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Approve in principle the above-described land exchange between the State of Hawaii and the Applicants under the terms and conditions cited above which are by this reference incorporated herein, provided that the details of the proposed exchange shall be submitted to the Board for final approval prior to documentation.
3. Rescind its prior action of October 28, 1994, under agenda item F-13;
4. Authorize the Chairperson to prescribe other terms and conditions as may be necessary to carry out the intent of the Board and to best serve the interests of the State.

Respectfully Submitted,



Gavin Chun  
Project Development Specialist

APPROVED FOR SUBMITTAL:

  
Peter T. Young, Chairperson



## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this "Memorandum"), dated as of September 11, 2006, is entered into by and between Tiana Partners, a Hawaii general partnership ("Tiana Partners") and the Hawaiian Humane Society, a Hawaii nonprofit corporation (the "Humane Society").

### Background

1. On December 28, 1976, Clorinda Lucas made a charitable gift to the Humane Society of a 50.6183968% undivided interest in 680.846 acres of land (the "Land") located in Niu Valley identified by TMKs (1) 3-7-04:01, 02 and 20. The deed to the Humane Society provided that the Land **"...shall be used for the benefit of the public for the operation of an educational preserve for flora and fauna, to be made accessible as an educational experience for the public under the control and administration of said Hawaiian Humane Society..."** On December 30, 1982, Clorinda Lucas conveyed an additional 1.4% undivided interest in the Land to the Humane Society, subject to the same use restrictions. Each of the deeds provided that the interest of the Humane Society would be forfeited to the State of Hawaii for use as a public park if the Humane Society failed to use the land for its intended purpose. Upon the death of Clorinda Lucas, her interest in the Land passed through her estate and is now held by Tiana Partners, a partnership formed by her daughter, Laura Thompson, and Laura's children and grandchildren, all of whom have resided on the Land for years in a family compound.

2. During the years after the gift, the Humane Society made numerous attempts to find a feasible way to use the Land to further the Humane Society's mission of teaching compassion and respect for all living things, promoting responsible behavior toward animals and the natural environment, and helping to create a community that embraces humane values. Over this period of time many different ideas have been considered by the Humane Society and by Tiana Partners. During 2004 and 2005 the Humane Society and Tiana Partners held a series of meetings with each other and with a number of community organizations and individuals, to try



to identify potential uses for the Land that would be consistent with the intent of the gift and would be beneficial to the community while being physically and economically feasible.<sup>1</sup>

3. One of the overriding considerations in the discussions of the potential uses of the Land was peaceful coexistence with the Thompsons and with the other neighbors in the area. The issue of access to the property became a key consideration. There are only two public roads that access the Niu land, Puamamane Street, and Kupaua Place. Puamamane Street accesses the property on the side where the Thompsons' residences are located. Using that access for a public use by the Humane Society would necessarily involve serious interference with the ongoing residential use by the Thompsons. The other access, Kupaua Place, is an extremely narrow road that would not be easily usable, especially for bus traffic, without a serious disruptive impact on the neighbors. To further evaluate these obstacles, in 2004, the Humane Society commissioned a feasibility study of potential projects on the Land from urban planners Helber, Hastert and Fee. This study, and subsequent discussions with the Thompsons made it clear that using any significant portion of the Land for an educational preserve accessible to the public would be extremely expensive and impractical and would involve serious disruption of the Thompson family compound and the rest of the neighborhood. This ultimately led to consideration of ways of converting the interest of the Humane Society to money and using the money to further the intent of the original gift.

4. In January, 2005, a Memorandum of Understanding between the Humane Society and Tiana Partners was signed, calling for the parties to jointly retain an appraisal firm to appraise the interest of the Humane Society in order to help the Humane Society and Tiana Partners agree on a price for which Tiana Partners would purchase the interest of the Humane Society. The appraisal report was completed and delivered to both Tiana Partners and the Humane Society in July, 2005. The report established a value of \$462,100 for the Humane Society's interest subject to the use restriction and \$1,703,600 for the interest free of the restriction and without any discount for partial ownership. The mid-point between these two values is \$1,082,850. There ensued several meetings and discussions with the appraiser to

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<sup>1</sup> This group included, among others, Marion Lyman-Mercereau (Punahou School Character Education), Mary Harbold (Honolulu Zoo), Greg Dunn (Hawaii Nature Center), Kathy Rothschild (Humane Society Administrator of Humane Education), Judy Nagasako (Department of Education Director of Character Education), Maura O' Connor (Environmental Education Designer), and Colleen Muarakami (Department of Education Environmental Education).

clarify his results and then several follow up meetings with Tiana Partners resulting in the agreement in principle set forth below.

### Understandings

1. Subject to the approvals described below, the Humane Society and Tiana Partners shall effect the following conveyances:

(a) Land Exchange With the State. Subject to the agreement of the Board of Land and Natural Resources of the State of Hawaii ("BLNR"), and subject to no disapproval by the legislature under the provisions of Section 171-50, Hawaii Revised Statutes, and subject to the approval of the Probate Court for the First Circuit of the State of Hawaii (the "Probate Court"), the Humane Society and Tiana Partners shall each convey their interests in "Parcel C", consisting of approximately 200 acres of the mauka portion of the Land, together with access and trail easements, to the State of Hawaii (the "State") in exchange for the conveyance by the State to Tiana Partners of the State's contingent reversionary interest in the remaining portions of the Land ("Parcels A and B");

(b) Conveyance of Humane Society's Interest to Tiana. Subject to the approval of the Probate Court, the Humane Society shall convey its 52.0184% interest in Parcels A and B to Tiana Partners free and clear of the use restrictions contained in the deeds to the Humane Society, in exchange for the sum of \$1,082,850 in cash (the "Cash") and the agreement of Tiana Partners that if Tiana Partners shall voluntarily sell all or any portion of Parcels A and B (other than a transfer to the State of Hawaii) during the ten-year period following the date of the transfer, Tiana Partners shall pay to the Humane Society a share of the gross proceeds of any such sale equal to three percent multiplied by the number of years fewer than ten elapsed from the date of the transfer to the date of such sale (e.g., if a sale took place five years after the transfer, the Humane Society would be entitled to 15% (3% x 5 years); if a sale took place eight years after the transfer, the Humane Society would be entitled to 6% (3% x 2 years).

2. Promptly after it is received, the Humane Society shall use the Cash, and any additional proceeds resulting from a transfer by Tiana, to establish a segregated fund to be known as the "Charles and Clorinda Lucas Educational Fund", the principal and interest of which fund shall be used exclusively to pay the costs associated with educational programs designed to foster compassion and caring for all life, focused on the interdependent relationship between animals, humans and the environment and on our roles as stewards and caregivers.

3. Tiana Partners and the Humane Society shall cooperate with each other in seeking the approvals of BLNR and the Probate Court, and shall share equally any out-of-pocket costs

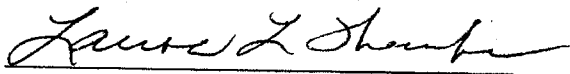
incurred in that connection, including, without limitation, the cost of all necessary appraisals and the cost of a Phase I environmental inspection of Parcel C.

4. This Memorandum may be executed in one or more counterparts, each of which, when taken together, shall constitute one and the same instrument. Facsimile signatures may serve in the place of original signatures.

5. Except for the provisions of paragraphs 3 and 4, this Memorandum is not legally binding upon Tiana Partners or the Humane Society. A legally binding obligation of the Humane Society to convey its interest in the Land to Tiana Partners and of Tiana Partners to pay the sums set forth above, shall only be created upon the execution and delivery of a purchase and sale agreement and related documents all of which shall be satisfactory in form and substance to both Tiana Partners and the Humane Society.

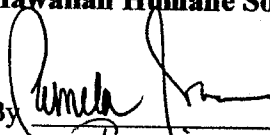
IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed as of the date first written above, *with the understanding that except as provided above, this Memorandum is not legally binding upon either party.*

**Tiana Partners**

By   
Its General Partner

By \_\_\_\_\_  
Its General Partner

**Hawaiian Humane Society**

By   
Its President + CEO

By \_\_\_\_\_  
Its